

Henry's request without any disclosure of purpose by Henry, and that the accounts were established as part of Henry's scheme to remove money from Paul Tien's personal account, and from the AUC Cayman No. 2's operating accounts, in order to deposit such funds in an account accessible by Henry and Ming.

32. It was not until April of 2003 that Wachovia officials brought the existence of the Southeastern Trust accounts to Yife's attention. He had no knowledge concerning these accounts at the time. He reported this information to Dr. Tien who was "shocked" to learn of these accounts, especially given the significant amount of funds involved, and the fact that none of the funds were insured beyond the first one-hundred thousand dollars.

The Small SETC Account

33. During August of 1995, AUC Cayman No. 1 made stockholder distributions. Four checks were issued to the shareholders. Dr. Paul Tien received \$3,256,000, Ming Tien received \$1,676,000, Yife Tien received \$1,640,000 and Henry Tien received \$1,654,000. Ming's check, which was written on June 13th, 1995, was endorsed by her and deposited into a certificate of deposit, opened on July 16, 1996, in Dr. Paul's Tien's name. At trial, Ming offered no explanation for this transaction. I conclude that it was not intended as a gift but as a vehicle for holding her distribution in Dr. Tien's name on her behalf. At closing argument, counsel for the AUC entities stipulated that it was Ming's money.

34. On July 24, 2000, after a progression of rolling certificates of deposits in Dr. Paul Tien's name, Henry Tien transferred the monies into a certificate of deposit in the name of Southeastern Trust Company Ltd. After another series of rollover certificate of deposits, the monies were eventually transferred to a Wachovia Commercial High

Performance Money Market Account (Number 2000015516176) in the name of Southeastern Trust Company Ltd. The address on the account was Ming and Henry's home in South Miami, Florida.

The Large SETC Accounts

35. The "Large SETC Account" consists of a complicated series of distributions from the retained earnings of AUC Cayman No. 2 from the years 2000 through 2003. As an overview, I conclude that Henry Tien engaged in a scheme to remove retained earnings belonging to AUC Cayman No. 2 during the years 2000 through 2003 under the guise of shareholder distribution without the knowledge or permission of Dr. Paul Tien or the approval of the Board of Directors of AUC N.V. The reasons for this scheme are unclear. What is patently clear is that Henry did not want either his father or brother, Yife, to know about the transfers. Presumably, Henry and Ming intended to remove the money at a later time, perhaps after Dr. Tien's death. In implementing this scheme, I conclude that Henry obtained signatures from his father and brother on forms in the name of Southeastern Trust Company without their full knowledge, understanding and consent as to what they were signing. They simply signed the forms because they trusted Henry and did not question him about such matters.

36. The first prong of the distribution which found its way into the large SETC Account came from Dr. Paul Tien's own money. The source of the funds was from Dr. Paul Tien's 1995 distribution from AUC Cayman No. 1. The first deposit was on July 16, 1996 in the form of a certificate of deposit at First Union National Bank of Florida in the amount of \$1,591,866.73 in the name of Paul Tien. The address on the certificate of deposits was

Ming and Henry's home in South Miami, Florida. A series of rollover certificate of deposits followed until the monies (\$2,003,306.93) was transferred on July 24, 2000 to another First Union certificate of deposit in the name of Southeastern Trust Company Ltd. It remained in the name of Southern Trust Company LTD in Account Number 013111111146619. On December 30, 2000, the funds were combined with an additional \$33 million dollars to create a larger SETC account.

37. The percentage balance of this prong, with attributable interest, on April 8, 2004 was \$2,205,162.97 [Exhibit 526]. I conclude by the preponderance of the more credible evidence that the owner of these funds is Dr. Paul Tien, and that the source of the distribution came from the AUC Cayman No. 1 accounts in 1995.

38. The second prong of funds into the large SETC account came from the AUC Cayman No. 2 account at First Union in the name of "American University of Caribbean St. Maarten." As of June 30, 2000, this account had \$35,737,378.48 in a certificate of deposit. On July 13, 2000, Henry wrote to a First Union representative to transfer these funds into a certificate of deposit in the name of Southeastern Trust Company Ltd. I conclude that the transfer of these funds coincides with the so-called "stockholder distribution" of \$33 million which was reflected in the year 2000 audited report.

39. The third prong of funds concerns a transfer by check to Paul Tien, on December 31, 2002, in the amount of \$4,300,000 from an account at First Union in the name of "American University of the Caribbean St. Maarten, Netherlands, Antilles." This distribution coincides with the so-called "stockholder" distribution that occurred in the year 2000 in that amount. Again, I conclude that this was not a distribution to Paul Tien with his

knowledge and consent, but a transfer by Henry Tien of AUC Cayman No. 1 retained earnings without proper authority and authorization. On March 31, 2003, Henry placed the sum into the existing Commercial High Performance Money Market Account in the name of Southeastern Trust Company Ltd.

40. The fourth prong concerns the transfer by Henry, on February 28, 2002, from an existing account at First Union in the name of American University of the Caribbean in the amount of \$7,108,964.59 to a certificate of deposit in the name of Southeastern Trust Company, LTD. This transfer coincides with the so-called year 2001 "stockholder" distribution from the retained earnings of AUC Cayman No. 2. After a series of rollover certificate of deposits, this sum, with interest, was transferred to the First Union Commercial High Performance Money Market Account on March 31, 2003. Again, these funds were taken by Henry and deposited without authorization.

41. The last component consists of two checks from the First Union AUC Cayman No. 2 account. On August 1, 2003 and September 8, 2003, Henry Tien wrote two checks on the AUC Cayman # 2 account in the amount of \$9 million and \$3 million which were deposited into the AUC Cayman No. 1 account as First Union. Henry then moved the aggregate \$12 million (noting that it was to correct deposit errors) from the AUC Cayman No. 1 account, into the large Southeastern Trust account, bringing the balance to \$61 million dollars, which rolled forward with interest until later frozen by the Court. This transfer coincides with the so-called "stockholder" distribution reflected in the Year 2003 audit. However, I conclude, based on the preponderance of the credible evidence, that the transfer was not a stockholder distribution, but the unauthorized removal of retained

earnings from the AUC Cayman # 2 operating accounts by Henry and placed into the Southeastern Trust Company Ltd. account which he established at First Union. When added to the other deposits, the total funds accumulated in the Southeastern Trust Company First Union Commercial High Performance Money Market Account (Number 20000155161163), as of November 28, 2003, was \$61,910,111.74.

42. The Court's findings relating to the source and amount of funds discussed above is supported by the well-reasoned expert testimony and report of AUC's expert, Michael P. Elkin, CPA whose conclusions were undisputed at trial. To summarize, except for several million dollars belonging to Dr. Tien personally as of the date of the Interpleader, the remainder of funds in the large SETC account were improperly transferred by Henry Tien from the operating accounts of AUC Cayman No. 2 into a defunct account long abandoned by Dr. Tien.

43. On December 15, 2003, Dr. Tien prepared documents in the name of Southeastern Trust Company indicating that he, "being a Trustee and Founder" of it authorized the removal of the funds from the accounts and prohibited Ming and Henry from undertaking any transactions in the name of the company.

44. On January 7, 2004, Henry Tien and Ming Tien appeared at Wachovia and requested to remove **all funds** from the SETC accounts. Upon being told that Yife Tien had closed the old accounts and opened new accounts on which Henry Tien and Ming Tien were no longer signatories, they stated that they were collectively 50% shareholders of the corporations and that Dr. Paul Tien and Yife Tien did not have the corporate authority to change the accounts.

45. Henry Tien, throughout the case, has been uncooperative with discovery requests. Despite no longer being employed by MEIO, he maintained the financial records of the AUC entities at his house in hundreds of banker boxes. An action in replevin was required to remove these boxes to the offices of his local counsel. Based on events occurring during the trial, I also conclude that Henry Tien has improperly maintained possession of a number of stock certificates that actually belonged to AUC Cayman No. 2. These stock were acquired by AUC Cayman No. 2 as investments. The stock certificates were not returned by Henry to the company after he was fired. In addition, Henry received, but did not turn over, a number of dividend checks that properly belonged to AUC Cayman No. 2. Instead, he transferred to his name, and cashed, stock certificates and dividend checks. He claimed that he used the proceeds to pay for his (and Ming's) attorney fees and certain personal expenses. By order of the Court, I took into custody a number of stock certificates, checks and papers belonging to AUC Cayman No. 2, AUC and MEIO that Henry still maintained at his and Ming's home in South Miami, Florida.

46. An "Order on Temporary Injunction without Notice" was entered in a divorce case filed in Dade County Circuit Court by Ming against Dr. Paul Tien [Exhibit 561]. The AUC entities were included as party defendants. The Dade Circuit Court entered a Temporary Injunction against the removal of the funds subject to this Interpleader, subject to modification on application. The Temporary Injunction Order provides in part:

The parties are litigants in a federal court proceeding in the United States District Court, Southern District of Florida, Case No. 04-20834-CIV-GOLD/TURNOFF. The nature of that litigation is an interpleader action (originally filed by Wachovia Bank) concerning funds claimed by the parties. The Corporate Defendants will be referred to as the "AUC/MEIO Enterprise."

The Interpleader Funds are approximately Ninety-Six Million (\$96,000,000) Dollars plus interest in United States currency. The federal court proceeding will determine ownership interest and entitlement of each of the parties to the Interpleader Funds. A Receiver has been appointed by the federal court to manage the Interpleader Funds. The Wife claims that all or substantially all of the Interpleader Funds are a marital asset subject to distribution by this Court. The Husband has disavowed any interest in the Interpleader Funds, claiming instead that the funds belong to the AUC/MEIO Enterprise, most of which he claims to own, and all of which he claims to control.

...

If the Interpleader Funds are awarded to the Husband and/or the Defendants herein (the AUC/MEIO Enterprise) in the federal litigation ... without this Temporary Injunction entered, there is a substantial likelihood that the Husband will immediately cause the funds to be removed from the jurisdiction of the United States, the State of Florida and this Court.

47. The AUC entities agree that, pending further order from this Court, or from the Dade County Circuit Court, the monies belonging to Paul Tien, AUC Cayman No.1, AUC Cayman No. 2 and MEIO are subject to the state court injunction order, and that no monies should be distributed pending such further order.

48. The AUC entities now concede that the small SETC account is owned by Ming. Henry, Ming and the AUC entities agree that the three accounts at issue (other than the SETC accounts) are held in the respective names of MEIO, AUC Cayman No. 1 and AUC Cayman No. 2. There is no dispute that the monies that funded the MEIO, AUC Cayman No. 1 and AUC Cayman No. 2 accounts came from historical revenues of the respective companies. None of the monies at issue came from corporate distributions of profits to individual shareholders. Ming and Henry continue to insist that the monies in all the accounts (other than the small SETC account) are owned 25% each based on an intra-family agreement that prevailed over thirty years. Although Henry and Ming make this

claim, they did not file cross-claims against the AUC entities. Nor have they raised any claims to pierce the corporate veil of any of the companies.

III. Applicable Law

1. Interpleader Law

I begin with a discussion of the essential aspects of interpleader. The interpleader statute, 28 U.S.C.A. § 1335, permits any person, firm, corporation, association, or society which (1) has in its custody or possession money or property worth \$500 or more; or (2) has issued a note, bond, certificate, insurance policy, or other instrument worth \$500 or more; or (3) has provided for the delivery, payment, or loan of money or property worth \$500 or more; or (4) is under any written or unwritten obligation in the amount of \$500 or more, to bring an action of interpleader if two or more adverse claimant of diverse citizenship are claiming or may claim such money, property, or benefits, and the stakeholder has made the required deposit or bond. Rule 22 provides that persons having claims against a stakeholder may be joined as defendants and required to interplead when their claims are such that the stakeholder is or may be exposed to double or multiple liability. The rule supplements, rather than superseding or limiting, 28 U.S.C.A. § 1335, and provides that interpleader actions are to be conducted in accordance with the Federal Rules of Civil Procedure.

Questions of jurisdiction and procedure of a federal court interpleader actions are determined by federal law. *Coastal Air Lines, Inc., v. Dockery*, 180 F.2d 874 (8th Cir. 1950). As to matters of substantive law and choice of law questions in actions premised on diversity jurisdiction, the federal court must apply the law of the forum state. *Griffin v.*

McCoach, 313 U.S. 498 (1941). Thus, the federal interpleader statute is merely a special brand of diversity jurisdiction and the determination of who had the right to an interpleader fund is made under the law of the forum state. *Metropolitan Life Ins. Co. v. O' Ferrall Ochart*, 635 F. Supp. 119 (D.C. Puerto Rico, 1986).

It is well-established that interpleader is a form of action originally developed under equity jurisprudence and that a district court has broad and significant powers in an interpleader action. An interpleader action typically involves two stages. In the first stage, the district court decides whether the requirements for a rule or statutory interpleader action have been met by determining if there is a single fund at issue and whether there are adverse claimants to that fund. Wright, Miller & Kane, [F]ederal Practice & Procedure: Civil 2d § 1714 (1986). If the district court finds that the interpleader action has been properly brought, the district court will then make a determination of the respective rights of the claimants. *Id.* When there is no genuine issue of material fact the second stage may be adjudicated at summary judgment, and if there is a trial each claimant must prove their right to the fund by a preponderance of the evidence. *Id.*

This matter is now in the second stage of an interpleader action. After interpleader is granted and it is directed that an issue be framed between respective party defendants, each defendant occupies the position of a plaintiff and must state his own claim and answer that of the other. *Reconstruction Finance Corp., v. Aquadro*, 7 F.R.D. 406, 409 (D.C. Pa. 1947) ("It does not matter which one of the defendants would be designated as the plaintiff in the interpleader since each must establish his own claim.")

The second stage of interpleader involves the determination of the respective rights

of the claimants to the stake. At this juncture, each claimant occupies an adversary position to the others and must proceed accordingly. This stage is "ultimately resolved by the entry of a judgment in favor of the claimant who is lawfully entitled to the stake." *NY Life Distributors, Inc.*, 72 F.3d 371, 375 (3d Cir.1995) (citing *Diamond Shamrock Oil & Gas Corp. v. Commissioner of Revenues*, 422 F.2d 532, 534 (8th Cir.1970)). If there is no genuine issue of material fact, this stage may be resolved by summary judgment; if the material facts are disputed, each claimant must prove its right to the fund by a preponderance of the evidence. *General Electric Capital Assurance v. Van Norman*, 209 F.Supp.2d 668,670 (S.D. Tex.2002).

In the second stage of interpleader, the Court determines the rights of the parties and the priority of claims as they existed at the time the interpleader action was commenced. See *In re Enron Corporation*, 2006 WL 1663383, * 4-5 (S.D. Tex. 2006).

As the court in *In re Enron*, stated:

Furthermore, three Circuit Courts of Appeals, including the Second and the Fifth, have held that the district court normally determines the rights of the parties and the priority of claims in an interpleader action as they existed at the time the interpleader was commence. *Avant Petroleum, Inc. v. Banque Paribas*, 853 F.2d 140, 143-44 (2d Cir. 1988)(holding "that where an interpleader action is brought to have the court determine which of two parties has priority with respect to the interpleader fund, the court should normally determine priority as of the time the fund was created"; *White v. FDIC*, 19 F.3d 249, 252 (5th Cir. 1994)(holding that "activity subsequent to the initiation of an interpleader action is normally immaterial in determining which claimant has a superior right to the interpleader fund"); *Texaco, Inc. v. Ponsoldt*, 118 F.3d 1367, 1369-70 (9th Cir. 1997)("The priority of claims to the res in an interpleader action must normally be determined at the time is initiated, and cannot be altered by the events after the interpleader fund becomes viable.") As stated by the Ninth Circuit, "As the entire point of an interpleader action is to resolve then competing rights and claims, it makes perfect sense that the action itself cannot be used as a vehicle for further

jockeying for claim position. *Ponsoldt*, 118 F.3d at 1370.

Thus, activity occurring after the initiation of the interpleader action is usually immaterial in determining which claimant has a superior right to the interpleader fund. *White v. FDIC*, 19 F.3d 249 (5th Cir. 1994). Where there are two claimants to specific property deposited in court, and one of the claimants moves to dismiss the other claimant's claims, the court may award the property to the first claimant deposit despite the first claimant's failure to answer formally claiming the property. *Syms v. McRitchie*, 187 F.2d 915 (5th Cir. 1951).

After entering a judgment in the interpleader action the district court also has the power to make all appropriate orders to enforce its judgment pursuant. See 28 U.S.C. § 2361. In an interpleader action the district court may also enter an order restraining the claimants from instituting any proceeding affecting the property until further order of the court. *Rhoades v. Casey*, 196 F.3d 592, 600-601 (5th Cir. 1999).

**2. The Nature of the Property Interest In Bank Accounts
and the Lack of Ownership Interests of Signatories to Corporate Bank Accounts**

A bank account is legally a debt owed by the bank to the depositor. The funds are owed to the depositor by the bank and not to any signatory or other agent of the depositor. *Bank of Palmetto v. Hyman*, 290 F. 353 (5th Cir. 1923). In dealing with banks as depositories of corporate funds, it is the common banking practice to require the corporation to furnish the bank certified resolutions of its board of directors authorizing the opening of the account and naming the corporate agents who are authorized to sign on

the account, including the manner of signing, whether singly or jointly with others. See *Michie, Banks and Banking*, Ch. IX, § 181. A bank is protected when relying on such certified corporate resolutions and accompanying signature cards. See *O'Connor v. First Bank & Trust Co.*, 79 A.2d 687 (1951). However, resolutions and signature cards do not confer any property or other rights to the signatories contained therein since they are for the account holder and the bank's protection and they are only evidence of the corporate agent's authority to operate the bank account. *Glenn Falls Indemnity Co. v. Palmetto Bank*, 23 F. Supp. 844 (W.D. S.C. 1938). Such authority of a signatory on a corporate account, being the authority of an agent, can always be changed or withdrawn by the corporate principal, acting through its board, whether the signatory is a corporate officer or a mere agent. See RESTATEMENT (SECOND) OF AGENCY, § 118.

Applying this law, I conclude that the accounts at issue (other than the small SETC account belonging to Ming) are properly owned by each respective corporate entity and not by the individual shareholders. There has been no claim to pierce the corporate veil in this case as to any of the companies. I further conclude, as a matter of law, that Henry's transfers and distributions into the large SETC account were unauthorized; were undertaken under false pretenses, and that SETC was not a viable entity at the time of the transfers by Henry.

3. Law of Joint Venture Under Florida Law

While not formally filing a Cross-Claim, Henry and Ming Tien's claim to the monies is based partly on a theory of joint venture between the four family members. I address this issue assuming that they can maintain their position based on their affirmative

defenses.⁹ In *Klaber v. Klaber*, 133 So.2d 98, 100 (Fla. App. 1961), joint venture was defined as:

A joint adventure, variably called joint venture, is a contractual relationship in the nature of a limited business partnership. It rests upon an express or implied agreement of two or more persons to combine their property or time or both in a specified course of business, or in a particular business transaction, and to share jointly on some stipulated basis in the profits and losses with each coadventurer having a proprietary interest and coordinate control and authority to bind the others with respect to the subject matter; and the burden of proving a joint adventure rests upon the party asserting its existence. See *Kislak and Hotchkiss et ux. v. Kreedian*, Fla.1957, 95 So.2d 510 (Fla. 1957).

In a dissent in *Hallock v. Holiday Isle Resort & Marina, Inc.*, 885 So.2d 459, 464 (Fla. App. 3 D.C.A. 2004), Judge Frank A. Shepherd accurately summarized the difference between a joint venture and a partnership as follows:

Florida law certainly recognizes that there is a distinction between a joint venture and a partnership. *Nautica Int'l., Inc. v. Intermarine USA, L.P.*, 5 F.Supp.2d. 1333 (S.D.Fla.1998). It is not that a party to a joint venture would not owe a fiduciary duty to the other party. *Deal Farms, Inc. v. Farm & Ranch Supply, Inc.*, 382 So.2d 888, 890 (Fla. 1st DCA 1980) (“relationships of joint venture and partnership are similar and governed by the same rules of law, although distinguishable in certain respects”). Under Florida law, a party to a joint venture owes fiduciary duties to the other party. The critical difference is that with joint ventures, the scope of the business relationship is limited to a single purpose or object. 8 Fla.Jur.2d at § 746 (“Joint venture differs from partnership in that it has a limited and specific object in view, [and] ordinarily terminat[es] when the objects of its creation have been accomplished”). Hence, naturally, the scope of the fiduciary duty is limited to the subject matter of the agreement and does not go beyond the contract. *Id.* (“some of the incidents of partnership do not, or may not, apply [to joint ventures]”).

Under Florida law, essential elements of joint venture are: (1) community of interest

⁹. Under any theory, Henry and Ming never had any conceivable basis to claim more than one-half of the monies at issue (other than in the small SETC account).

in performance of common purpose, (2) joint control or right of control, (3) joint proprietary interest in subject matter, (4) right to share in profits, and (5) duty to share in any losses that may be sustained. *Advanced Protection Technologies, Inc. v. Square D Co.*, 390 F. Supp. 2d 1155 (M.D. Fla. 2005). It is well-established under Florida law that joint venture agreements are not required to be in writing. *Id.*

To prove a joint venture under Florida law, evidence must show all of the following: (1) all the essentials of an ordinary contract, including an intent to enter into a contract; (2) a community of interest in the performance of a common purpose; (3) joint or shared control or right of control over operations, personnel, and facilities; (4) joint ownership interest in the venture's business; (5) a right to share in the profits; and (6) a duty to share in any losses that may be sustained. *Miami-Dade County, Fla. v. U.S.*, 345 F. Supp. 2d 1319 (S.D. Fla. 2004). The ultimate determination, however, turns upon evidence of intent of the parties. *Florida Trading and Inv. Co., Inc. v. River Const. Services, Inc.*, 537 So.2d 600, 602 (Fla. App. 2 Dist., 1988).

Applying this law, I conclude that the evidence overwhelmingly fails to support any claim of joint venture. Dr. Paul Tien never intended that the members of the Tien family would share equal control or have an equal distribution of profits in AUC Cayman No. 1, AUC Cayman No. 2 or in AUC N.V. On the contrary, the totality of the evidence overwhelmingly establishes that Dr. Tien at all times exercised full management control and majority ownership over AUC Cayman No.1. Likewise, he maintained full ownership and sole control over AUC Cayman No. 2, and the operation of the medical school. At best, the preponderance of the evidence shows that he gifted stock to family members in

AUC Cayman No. 1, but declined to do so in AUC Cayman No. 2 and AUC N.V. The evidence patently fails to support any agreement by Dr. Tien to share profits in AUC Cayman No. 1, except to the extent he decided to do so. Under no circumstances, however, did he agree to share profits in AUC Cayman No. 2. In sum, this case lacks any element that would support an intra-family joint venture.

4. AUC's Claim to Accounting and Distribution of Money.

The AUC Companies, MEIO, and Yife Tien also brought a claim for accounting under Florida law. A complaint in equity for an accounting must show that the plaintiff is entitled to the relief sought at the time the suit is instituted. Under Florida law, a party seeking an equitable accounting must show the existence of a fiduciary relationship or a complex transaction and must demonstrate that the remedy at law is inadequate. *Kee v. National Reserve Life Insurance Co.*, 918 F.2d 1538, 1540 (11th Cir.1990). The plaintiff must also show that he or she has a right of some kind in the funds involved in the demanded accounting, as, for example, a share in the profits of a partnership. Thus, sufficient grounds for equitable relief are shown by allegations in a complaint for an accounting against agents of the plaintiff wherein it is alleged that, by misrepresentation and falsehood, they misled the plaintiff to the plaintiff's injury and to their own pecuniary advantage. *Granik v. Perry*, 418 F.2d 832, 836 (5th Cir. 1969). However, a complaint fails to state a cause of action where no fraud is effectively alleged and where the payments in question are as much within the plaintiff's knowledge as they are within the defendant's knowledge. *Id.*

The AUC entities now concede that no valid claim for accounting exists with respect

to the monies in the various accounts. The excellent work of Michael Elkin negates the need for accounting as it relates to the funds at issue. Notwithstanding, I have structured this Order as "Interim" because I am reserving to decide the need for an accounting based on the evidence presented during the trial regarding Henry's activities with regard to AUC Cayman's No. 1 and 2's stock certificates and dividend checks. Henry's attorney, Mr. Batista, concedes the need for an accounting under the circumstances. It is necessary to understand whether it was Henry, AUC Cayman No. 1 or 2 who owned the stock certificates and dividend checks and related accounts at issue. Accordingly, it is necessary to reserve on this issue pending the filing of additional motions by the AUC entities.

Furthermore, prior to this Court's ruling on the actual distribution of AUC Cayman No. 2's monies, and in deference to comity with the Dade County Circuit Court, I direct the AUC entities to seek further relief from the Temporary Injunction issued by the Dade Circuit Court. It is my position that the monies in the large SETC account were improperly removed by Henry from the company's retained earnings and should be returned to the company to be used for medical school purposes. I recognize the concern of the Dade Circuit Court that no distributions should be made in a manner which could be returned to Dr. Paul Tien pending a final resolution of the divorce proceedings. Notwithstanding, any monies returned to the medical school to be used for medical school purposes under the direction of the Board of Directors seems consistent with the intent of the Temporary Injunction. I would suggest such a procedure under the auspices and supervision of the Court's Receiver, Ned Davis. An enhancement in viability of the medical school would only serve to increase the value of the stock from which Ming Tien may be entitled to an

equitable distribution under Florida law. It would serve no purpose to allow the AUC Cayman No. 2 monies to remain dormant. The medical school has a stellar board of directors and offers unique worldwide services to medical students. Its viability should not be jeopardized because Henry undertook a scheme to wrongfully remove its retained earnings. So long as Paul Tien does not receive a distribution of the monies, the interests of all parties should be protected. I also would recommend a request to release the MEIO monies from the Temporary Injunction in that Paul Tien has no ownership interest in that company.

IV. Conclusion

For the following reasons, it is **ORDERED AND ADJUDGED**:

1. With regard to the ownership of the five Wachovia accounts in question, I render the following findings with regard to ownership as of the date of the interpleader and the current ownership of said accounts.

a. The first bank account is in the name of "American University of the Caribbean School of Medicine" or as referred to throughout this case, "AUC Cayman No. 2." It was account number 9981595648 and is now account 9986157036. This account was and is owned by AUC Cayman No. 2.

b. The second account was in the name of "American University of the Caribbean" or as referred to throughout the case, "AUC Cayman No. 1." It was account number, 2000015516189 and is now account number 2000016747892. This account was and is now owned by AUC Cayman No. 1.

c. The third account is titled in the name of "Medical Education Information Office,

Inc., or, as referred to throughout the case, "MEIO." This account was account number 9980288176 and is now account number 9986157023. This account was and is now owned by MEIO.

d. The fourth account is titled in the name "Southeastern Trust Company, Ltd." ("Southeaster Trust Company" or "SETC"). This account was number 2000015516163 and is now account number 2000016747902 ("The large SETC account."). I conclude that \$2,205,162.97 of the monies (including accumulated *pro rata* interest in the large SETC belongs to Dr. Paul Tien's as his personal monies as of the date of the filing of the Interpleader. I conclude that the remaining monies were monies misappropriated by Henry from AUC Cayman No. 2. To summarize, except for several million dollars belonging to Dr. Paul Tien personally as of the date of the interpleader, the remainder of funds in the large SETC account were improperly transferred by Henry Tien from the operating accounts of AUC Cayman No. 2

e. The fifth account is titled in the name "Southeastern Trust Company, Ltd." This account was number 2000015516176 and is now account number 2000016774915 ("The small SETC account."). The AUC Companies, MEIO, and Yife Tien stipulated and I conclude that this account belongs to Ming Tien.

2. I reserve to render judgment on any future Motions filed by AUC Companies, MEIO, and Yife Tien related to accounting issues which arose at trial regarding Henry Tien's retention and use of stock certificates and funds allegedly belonging to either AUC Cayman No. 1 and/or AUC Cayman No 2.

3. No monies shall be released to Ming Tien at this time.

4. I reserve on the issue of AUC Companies, MEIO, and Yife Tien's "Motion for Fraud on the Court" **[DE # 630]** based on her actions and pleadings before this Court and the state court. Within 14 days of the date of this Order, AUC Companies, MEIO, and Yife Tien should inform the Court whether they intend to pursue this Motion in this Court or whether they intend to pursue this Motion before the state court presiding over Ming Tien's dissolution of marriage proceedings.

5. I reserve on the issue of the imposition of sanctions pursuant to Rule 11 against Ming and Henry Tien.

6. The AUC Companies, MEIO, and Yife Tien's "Memorandum Outlining Costs and Attorney's Fees Incurred in Preparing Their Motion to Strike" **[DE # 721]** is GRANTED. I RESERVE to determine by further order how payment in the amount of \$13,808.35 is to be made by Henry and Ming Tien.

7. No monies shall be distributed to the corporate entities, Cayman No. 1, Cayman No. 2, or MEIO at this time. **Distributions shall be made by a further (and final) Order of this Court.** Prior to issuance of an Order distributing the monies of the corporate entities, I direct the AUC entities to serve a copy of this Order on the Dade Circuit Court. I also direct the AUC entities to seek relief from the Temporary Injunction issued by the Dade Circuit Court in accordance with the recommendations of this Order.

8. Within 30 days of the docketing of this Order, the AUC entities shall inform this Court of any relevant events which occur in the state dissolution of marriage proceeding via status report.

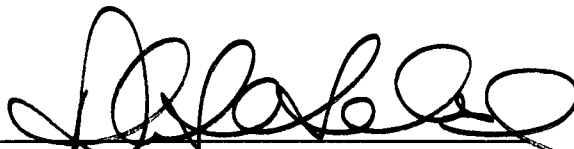
9. As stated in this Order, it is my position that the bulk of the monies in the

large SETC account were improperly removed by Henry from the company's retained earnings and should be returned to the company to be used for medical school purposes only. I recognize the concern of the Dade Circuit Court that no distributions should be made in a manner which could be returned to Dr. Paul Tien pending a final resolution of the divorce proceedings. Notwithstanding, any monies returned to the medical school to be used for medical school purposes under the direction of the Board of Directors seems consistent with the intent of the Temporary Injunction. I would suggest such a procedure under the auspices and supervision of the Court's Receiver, Ned Davis.

10. A telephonic status will be held on **September 14, 2007 at 4:30 p.m.** I have set aside 30 minutes. The Court will initiate the call.

11. The parties are directed to inform the Court of any relevant development in this case via joint written, status report.

DONE AND ORDERED in Chambers at Miami, Florida, this 6 day of August 2007.


ALAN S. GOLD
UNITED STATES DISTRICT JUDGE

Copies Furnished To:
Magistrate Judge William Turnoff
All Counsel of Record